UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
SAM NUNN
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA GEORGIA 30303-8960

August 9, 2010

Mr. E. Claiborne Barnwell
Environmental Division Administrator
Federal Highway Administration
666 North Street, Suite 105
Jackson, Mississippi 39202-3199

SUBJECT: EPA Review of Interstate 69 (Segment 11)
Final Environmental Impact Statement (FEIS)
From Benoit to Robersonville
Bolivar, Coahoma, Tunica, and Sunflower Counties, Mississippi

Dear Sir:

Thank you for your interagency coordination efforts on the proposed project. As a cooperating agency, EPA has participated in several scoping meetings, and site visits, provided detailed scoping and preliminary Draft EIS, Draft EIS and preliminary FEIS comments along with detailed ecological framework approach using GIS that identified ecologically sensitive areas, and conducted and shared our independent alternatives screening analysis report on the original alternatives that ranked the alternatives based on their projected environmental impacts.

Pursuant to Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act (NEPA), EPA Region 4 has evaluated the consequences of constructing, a **120** mile multi-lane interstate highway between Benoit and Robinsonville, Mississippi. According to the FEIS, the proposed highway system is intended to meet traffic demands, increase accessibility of the region, and stimulate economic development.

The FEIS describes all of the alternatives assessed during the development of the project. Initially, there were approximately 33 one-mile-wide segments that included eight preliminary one-mile-wide segments in Bolivar County, ten segments in Coahoma County and fifteen segments in Tunica County. Each of these individual segments was arranged into seventeen alternatives. Ultimately, Mississippi Department of Transportation (MDOT) refined the number of alternatives to nine 1,000 foot corridors based on feedback from Resource Agencies and the public in the DEIS.

The FEIS examines a no-build alternative, a transportation systems management alternative, other modes of transportation and three build alternatives (Western, Eastern and Central) for more detailed study. Each alternative is then divided into three sub-sections (Southern, Middle, and Northern). The FEIS identifies a preferred alternative alignment that uses

as much of existing US 61 as possible. This alignment is a modified version of the DEIS's Central Alternative and was selected based on the following criteria: having the least environmental impacts, greatest economic benefits, the most minority-low-income populations served, most cost effective route, best intermodal connections and greatest community support.

The FEIS indicates that the preferred alternative may impact 205 acres of wetlands, 17,660 linear feet of perennial streams, 24 303(d) streams, 1,507 acres of floodplain, 305 acres of wildlife/vegetative habitat, 8,296 acres of farmland, 26 conservation easements, 69/73 residential and 4 business relocations and 16/17 archeological sites and 4 historic sites (adverse effect), 10 hazardous materials sites and 4 noise sensitive sites. Consequently, EPA has remaining comments regarding water resource impacts, residential relocations, and land use changes.

The FEIS documented the selection of the preferred alternative alignment demonstrating the NEPA and Clean Water Act section 404(b)(1) Guidelines (Guidelines) regarding alternatives and the first step of the avoidance process defined under "mitigation" by both of these federal laws. The tables and narration support the selection of the preferred alignment as potentially impacting the fewest federally jurisdictional waters of the United States.

The next procedural step required by NEPA and Guidelines is minimization of impacts. The preliminary FEIS provided only generic language addressing nationally accepted typical unlimited access roadways that meet the Federal Highways Administrations safety requirements when crossing environmentally sensitive locations that would include not only the federal and state wildlife preserves, management areas, parks, and reserves, but would include waters of the United States. The specific waters of the United States identified in the FEIS were open water channels and lakes; submerged and emergent aquatic vegetation; and wetlands adjacent to these waters.

The FEIS identifies some additional minimization commitment measures for crossing waters of the United States including:

1. bridging with scuppers will be avoided in bridge designs; MDOT agreed to avoid use in new areas except in areas where their use is the only practical way to handle drainage. MDOT is also considering eliminating the use of scuppers in existing bridges that require modification.
2. address and further coordinate with MDEQ on water quality issues during design and construction particularly around impaired water bodies that may arise from bridge and road stormwater run-off collected over waters of the United States and 100-year flood plain. More specific water quality commitment information should be provided in the Record of Decision.
3. aquatic and aquatic dependent fish and wildlife movement and migration through any culverts will include inverted designs, i.e., below grade with appropriate gravel sized substrate placed above the culvert bottom to historical grade elevation.

On Page 2, 4th paragraph, the FEIS states that "the inclusion of impact minimization is required to comply with the Guidelines." Once minimization of the roadway's unavoidable impacts is complete, by including, at a minimum, the aforementioned minimization activities then compensatory mitigation details should be discussed in more detail. These details will be necessary as the permitting phase of this project moves forward and the compensatory mitigation is required to comply with the "2008 Compensatory Mitigation for Losses of Aquatic Resources; Final Rule" which is better known as the 2008 Mitigation Rule (the Rule). All former Regulatory Guidance Letters (RGL) and Guidance (e.g., Mitigation Banking Guidance, 1995) with the exception of the 1990 Mitigation Memorandum of Agreement have been subsumed by the 2008 Mitigation Rule. Therefore, all compensatory mitigation planning must be in compliance with the Rule.

The Rule stipulates that functional assessments should be conducted on impact sites if a suitable assessment method is available. The Hydrogeomorphic Approach to Wetland Functional Assessment, from which discussions of wetland type were derived in Section 3 of the FEIS, is available in, Smith, R. D. and Klimas, C. V. (2002) (A Regional Guidebook for Applying the Hydrogeomorphic Approach to Assessing Wetland Functions of Selected Regional Wetland Subclasses, Yazoo Basin, Lower Mississippi River Alluvial Valley - ERDC/EL TR-02-4, U.S. Army Engineer Research and Development Center, Vicksburg, MS). Assessments of impact sites should be compared to assessments of potential mitigation sites to compare wetland class and functional "lift."

The FEIS's discussion of potential mitigation within or in the vicinity of the Dahomey National Wildlife Refuge and/or the O'Keefe Wildlife Management Area may be acceptable pending evaluation of mitigation plans, banking agreements, and or in lieu fee agreements as stipulated in the Rule. At a minimum, wetland compensatory mitigation should strive to replace the hydrogeomorphic classes impacted by the project. In addition, an important consideration regarding compensatory mitigation will be the identification of any state 303(d) listed waters impacted by the proposed project and the placement of compensatory mitigation along those waters or within the same watershed.

Furthermore, the FEIS does not appear to discuss compensatory mitigation for the over 17,000 linear feet of streams that are expected to be unavoidably impacted by the proposed project. Mitigation for stream impacts must take place either at an appropriate bank site or through some other mechanism approved under the Rule. The loss of stream habitat is of critical concern to EPA and replacement of these aquatic resources through compensatory mitigation must be accomplished.

Overall, major environmentally sensitive areas along the project corridor have been avoided and the magnitude of many of the environmental impacts proposed have been reduced as a result of early coordination with resource agencies and the public. However, impacts still remain primarily related to water resource mitigation. Compensatory mitigation for water resources needs to be further addressed in the Record of Decision (ROD) and during the Section 404 permitting process. In addition, efforts to minimize relocations should be considered during final design.

Thank you for the opportunity to comment on this proposed action. We look forward to working with FHWA and MDOT, to address any remaining identified concerns. EPA would also like to receive a copy of the ROD. If we can be of further assistance, please contact Ms. Ntale Kajumba of the NEPA Program Office at (404) 562-9620 or kajumba.ntale@epa.gov or William Ainslie of the Wetlands Regulatory Section at (404) 562-9343 or ainsley.william@epa.gov.

Sincerely,

Heinz Mueller, Chief
NEPA Program Office
Office of Policy and Management

cc: Ms. Kim D. Thurman